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III. REMARKS

Claim Status

Claims 1-11 stand rejected.

Claim Rejections - 35 USC § 103

Claims 1-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Duncan et al. (Letters in Applied Microbiology 2000) in view of Larossa et al. (US 6,607,885) and further in view of Bott et al. (Water Science and Technology 2001).

In the previous office action claims 1-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Duncan et al. (Letters in Applied Microbiology 2000) in view of Larossa et al. (US 6,607,885).

Applicant traversed this rejection in their last response and amended their claims in light of the rejection.

That rejection has now been withdrawn, so the only point left to consider is whether the addition of Bott et al. adds to the disclosure of the first two references which the examiner implicitly acknowledges do not render applicant's claims obvious.

In the new 35 USC 103(a) rejection, adding the Bott et al. reference to the combination of Duncan et al. and Larossa et al., the examiner states, at page 4 of the office action that Bott et al. teach

"that it is possible to identify a range of indicator proteins that are rapidly induced in response to stress and that these proteins provide valuable information about the health of the environmental system being studied (see for example, Abstract, and page 124)"

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However, a reading of Bott et al. states differently. The Abstract of Bott et al. specified that the paper deals only with the heat shock protein, GroEL. The reference, on page 24, reads “we contend that it may be possible to identify a range of indicator proteins ... that are rapidly induced in response to different mechanisms of xenobiotic stress.” [emphasis supplied]

This is not a disclosure of a scientific principle or a statement of scientific knowledge. Rather it is the musing of an experimenter who has not done any work to confirm or deny the possibility that the statement is true and who is so unsure of his ground that the most he is willing to say is that it “may be” possible.

The article then goes on to state that “it is important to establish preliminary relationships between stress protein induction patterns” in response to stressors.

Furthermore, in the second full paragraph of page 24, the authors state that they focused on monitoring “a single well characterized stress protein, GroEL.”

Thus, at best, the article hypothetically suggests that since one protein can be used as a stress indicator, other proteins may also be used. It does not indicate that may be used simultaneously. It requires that induction patterns be established, at least preliminarily.

Thus, Bott et al. does not disclose the use of multiple protein indicators and furthermore requires that induction patterns be determined which teaches away from applicant’s disclosure and claims.

Conclusion

Applicant respectfully submits that the amendments to the claims, as discussed above, also makes the invention unobvious over the references and believes these remarks and the claim amendments are sufficient to obviate the grounds for rejection

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presented in the outstanding office action and respectfully requests allowance of the pending claims. Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

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